UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,619	08/07/2003	Hideo Nakazawa	NIT-388	9590

24956   7590   08/15/2008
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA, VA 22314

EXAMINER
HAMILTON, MATTHEW L

ART UNIT	PAPER NUMBER
3688	

MAIL DATE	DELIVERY MODE
08/15/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _14 April 2008_.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under _Ex parte Quayle_, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _21-38_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _21-38_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _14 April 2008_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

Response to Amendment

1.   This action is in reply to the amendment filed on 14 April 2008.   Claims 1-20 have been cancelled.   Claims 21-38 have been added.   Claims 21-38 are currently pending and have been examined.

2.   **Examiner's Note**: The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant.   Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply.   Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Inventorship

3.   This application currently names joint inventors.   In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Previous Claim Rejections - 35 USC § 112

4.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5.   Claims 1, 4, 5, 9, 11, 13, 14, 18, 19 and 20 were rejected under 35 U.S.C. 112, second

paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention. The Applicant has cancelled the claims and the rejections have

been withdrawn.

6.   Claim 8 recited the limitation "the user" in line 5. There is insufficient antecedent basis for this

limitation in the claim. The Applicant has cancelled the claim and the rejection is withdrawn.

Previous Claim Objections

7.   Claim 1 was objected to because of the following informalities: The Applicant inadvertently added

the words "the and" in between the words contents and distributed. The Applicant has cancelled with

claim and the objection is withdrawn.

Claim Rejections - 35 USC § 112

8.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

9.   Claims 21, 29, 30 and 38 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards

as the invention (idiomatic English).   The first feature of the independent claim recites, "monitoring a

situation of the mobile terminal under control of the processing device in accordance with the program

and detecting arrival of a timing for distributing information set to the mobile terminal as a result of

monitoring the mobile terminal" is clear. For examination purposes, the Examiner interprets the claim as

the mobile terminal (phone) is constantly being tracked and monitored via a global positioning system

(GPS) or base station.   Based on the location information, the mobile terminal receives periodic

advertisements and information.

10.   Claims 25 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which applicant regards as the

invention. The claim recites, "wherein an operating system, a processing program, the program, and the

priority of the program and the processing program are stored to the memory with the mobile terminal,

and processing of the program and the processing program is executed in accordance with the priority

thereof under the operating system with the mobile terminal." is unclear. For examination purposes, the

Examiner interprets the claim as the mobile terminal (phone) has a ranking or priority for each of the

different programs installed in the phone.

Claim Rejections - 35 USC § 103

11.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

12.   Claims 21-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shioda et al. US

Publication 2002/0044639 A1.

Claim 21

        As per claim 21, **Shioda** teaches a method comprising:

monitoring a situation of the mobile terminal under control of the processing device in accordance with the

program and detecting arrival of a timing for distributing information set to the mobile terminal as a result

of monitoring the mobile terminal (paragraphs 0028 and 0029).

transmitting, to the information distribution server, a request for distributing the information based on

preset contents of the distributed information under the control of the processing device in accordance

with the program stored in the mobile terminal (paragraphs 0028, 0030 and 0031).

receiving the information distributed from the information distribution server in response to the request for distributing the information at the mobile terminal (paragraphs 0006, 0030 and 0031).

outputting the received information to an interface for outputting the information under the control of the processing device in accordance with the program stored in the mobile terminal (paragraph 0029).

Shioda does not teach *wherein the processing device starts a waiting program that is stored in the memory, is included in the program, and controls a waiting screen on the mobile terminal upon detecting the arrival of the timing for distributing the information in accordance with the program nor wherein the processing device transmits the request for distributing the information in accordance with the waiting program.* However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Shioda to include a waiting screen on the mobile terminal upon detecting the arrival of information. For example, when a user downloads a file or a document onto their computer a prompt (waiting screen) will be displayed on the computer monitor, showing "*please wait*" or a graph will be displayed showing how much (percentage) of the file has been downloaded until complete.

wherein the processing device outputs the distributed information to the waiting screen as the output interface for outputting the distributed information in accordance with the waiting program (paragraph 0029).

Claim 22:

As per claim 22, **Shioda** teaches the method of claim 21 as described above and further teaches *wherein the processing device monitors an operation situation of the mobile terminal, as the situation of the mobile terminal, in accordance with the program, and detects the arrival of the timing for distributing*

the information by generation of the operation situation that satisfies predetermined criteria for the mobile

terminal (paragraphs 0028, 0029, 0071 and 0072).

Claim 23:

As per claim 23, **Shioda** teaches the method of claim 22 as described above and further teaches

wherein the processing device monitors, as the operation situation, the presence or absence of calls, the

amount of traffic, and the amount of various processed data using the mobile terminal in accordance with

the program with the mobile terminal (paragraphs 0070).

Claim 24:

As per claim 24, **Shioda** teaches the method of claim 21 as described above and further teaches

wherein the processing device detects the arrival of the timing for distributing the information on the basis

of reception from the information distribution server in accordance with the program with the mobile

terminal (paragraphs 0028-0031).

Claim 25:

As per claim 25, **Shioda** teaches the method of claim 21 as described above but does not teach

wherein an operating system, a processing program, the program, and the priority of the program and the

processing program are stored to the memory with the mobile terminal, and processing of the program

and the processing program is executed in accordance with the priority thereof under the operating

system with the mobile terminal. However, it would have been obvious to one of ordinary skill in the art at

the time of the invention of Shioda to prioritize different programs within the mobile terminal. For

example, depending on the different types of cell phones and phone settings, receiving phone calls are

ranked first, receiving e-mail is ranked second, receiving text messages are ranked third. These

programs are ranked in a particular order due to settings and the functionality of the phone.

Claim 26:

As per claim 26, **Shioda** teaches the method of claim 25 as described above but does not teach

wherein the processing under the program is interrupted and the processing program is started, upon

detecting a request for processing the processing program during processing of the program under the operating system with the mobile terminal. However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Shioda to wherein the program is interrupted upon detecting a request for processing of the program under the operating system of the mobile terminal. For example, a user is surfing the Internet on their personal computer. After the user has been surfing the Internet for some time the user is interrupted or bombarded with pop-up advertisements.

Claim 27:

As per claim 27, **Shioda** teaches the method of claim 26 as described above but does not teach *wherein the processing program includes a processing program for accomplishing functions of a phone and e-mail with the mobile terminal.* However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Shioda to add a processing program for accomplishing functions of a phone and e-mail with mobile terminal. For example, smart phones, personal digital assistants (PDA) and Blackberry's are phones that accomplish the functionality of a phone, accessibility to e-mail and the Internet.

Claim 28:

As per claim 28, **Shioda** teaches the method of claim 21 as described above and further teaches *wherein the request for distributing the information has a user ID for identifying a user of the mobile terminal* (paragraph 0028).

Claim 29:

As per claim 29, **Shioda** teaches the method of claim comprising:
monitoring a situation of the mobile terminal under control of the processing device in accordance with the program and detecting arrival of a timing for distributing information set to the mobile terminal as a result of monitoring the mobile terminal (paragraphs 0028 and 0029).

transmitting, to the information distribution server, a request for distributing the information based on

preset contents of the distributed information under the control of the processing device in accordance

with the program stored in the mobile terminal (paragraphs 0028, 0030 and 0031).

receiving the information distributed from the information distribution server in response to the request for

distributing the information at the mobile terminal (paragraphs 0006, 0030 and 0031).

outputting the received information to an interface for outputting the information under the control of the

processing device in accordance with the program stored in the mobile terminal (paragraph 0029).

Shioda does not teach *wherein the processing device receives a request for changing an output form of*

the output information in accordance with the program via an input interface of the mobile terminal, and

the processing device changes an output form of the distributed information in response to the request for

distributing the information in accordance with the program, and outputs the changed output to an output

interface of the mobile terminal. However, it would have been obvious to one of ordinary skill in the art at

the time of the invention of Shioda to change the output form (display) of the information in accordance

with the program at the mobile terminal. For example, a web site is displayed differently when shown on

a desk top computer (wide computer monitor), a laptop (a smaller computer monitor) and a cell phone

display screen. These display settings are different because of the size of the computer/cell phone

screen and graphical capabilities or limitations.

Claim 30:

As per claim 30, **Shioda** teaches the mobile terminal apparatus:

wherein a situation of the mobile terminal is monitored under control of the processing device in

accordance with the program and arrival of a timing for distributing information set to the mobile terminal

apparatus   is   detected   as   the   monitoring   result   (paragraphs   0028   and   0029).

a request for distributing the information based on preset contents of the distributed information is transmitted to the information distribution server under the control of the processing device in accordance with the program (paragraphs 0028, 0030 and 0031).

the information distributed from the information distribution server is received in response to the request for distributing the information (paragraphs 0006, 0030 and 0031).

the received information is output to an interface for outputting the information under the control of the processing device in accordance with the program (paragraph 0029).

Shioda does not teach *the processing device starts a waiting program that is stored in the memory, is included in the program, and controls a waiting screen on the mobile terminal, upon detecting the arrival of the timing for distributing the information in accordance with the program, nor the processing device transmits the request for distributing the information in accordance with the waiting program.* However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Shioda to include a waiting screen on the mobile terminal upon detecting the arrival of information. For example, when a user downloads a file or a document onto their computer a prompt (waiting screen) will be displayed on the computer monitor, showing *"please wait"* or a graph will be displayed showing how much (percentage) of the file has been downloaded until complete.

the processing device outputs the distributed information to a waiting screen as the output interface for outputting the distributed information in accordance with the waiting program (paragraph 0029).

Claim 31:

As per claim 31, **Shioda** teaches the mobile terminal apparatus of claim 30 as described above and further teaches *wherein the processing device monitors an operation situation of the mobile terminal, as the situation of the mobile terminal, in accordance with the program, and detects the arrival of the timing for distributing the information by generation of the operation situation that satisfies predetermined criteria for the mobile terminal* (paragraphs 0028, 0029, 0071 and 0072).

Claim 32:

As per claim 32, **Shioda** teaches the mobile terminal apparatus of claim 31 as described above and further teaches *wherein the processing device monitors, as the operation situation, the presence or absence of calls, the amount of traffic, and the amount of various processed data using the mobile terminal in accordance with the program* (paragraphs 0070).

Claim 33:

As per claim 33, **Shioda** teaches the mobile terminal apparatus of claim 30 as described above and further teaches *wherein the processing device detects the arrival of the timing for distributing the information on the basis of reception from the information distribution server in accordance with the program* (paragraphs 0028-0031).

Claim 34:

As per claim 34, **Shioda** teaches the mobile terminal apparatus of claim 30 as described above but does not teach *wherein an operating system, a processing program, the program, and the priority of the program and the processing program are stored to the memory, and processing of the program and the processing program is executed in accordance with the priority thereof under the operating system.* However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Shioda to prioritize different programs within the mobile terminal. For example, depending on the different types of cell phones and phone settings, receiving phone calls are ranked first,

receiving e-mail is ranked second, receiving text messages are ranked third. These programs are ranked

in a particular order due to settings and the functionality of the phone.

Claim 35:

As per claim 35, **Shioda** teaches the mobile terminal apparatus of claim 34 as described above

but does not teach *wherein the processing under the program is interrupted and the processing program*

is started, upon detecting a request for processing the processing program during processing of the

program under the operating system. However, it would have been obvious to one of ordinary skill in the

art at the time of the invention of Shioda to wherein the program is interrupted upon detecting a request

for processing of the program under the operating system of the mobile terminal. For example, a user is

surfing the Internet on their personal computer. After the user has been surfing the Internet for some time

the user is interrupted or bombarded with pop-up advertisements.

Claim 36:

As per claim 36, **Shioda** teaches the mobile terminal apparatus of claim 35 as described above

but does not teach *wherein the processing program includes a processing program for accomplishing*

functions of a phone and e-mail. However, it would have been obvious to one of ordinary skill in the art at

the time of the invention of Shioda to add a processing program for accomplishing functions of a phone

and e-mail with mobile terminal. For example, smart phones, personal digital assistants (PDA) and

Blackberry's are phones that accomplish the functionality of a phone, accessibility to e-mail and the

Internet.

Claim 37:

As per claim 37, **Shioda** teaches the mobile terminal apparatus of claim 30 as described above

and further teaches *wherein the request for distributing the information having a user ID for identifying a*

user of the mobile terminal is transmitted (paragraph 0028).

Claim 38:

As per claim 38, **Shioda** teaches the mobile terminal apparatus:

wherein a situation of the mobile terminal is monitored under control of the processing device in accordance with the program and arrival of a timing for distributing information set to the mobile terminal apparatus is detected as the monitoring result (paragraphs 0028 and 0029).

a request for distributing the information based on preset contents of the distributed information is transmitted to the information distribution server under the control of the processing device in accordance with the program (paragraphs 0028, 0030 and 0031).

the information distributed from the information distribution server is received in response to the request for distributing the information (paragraphs 0006, 0030 and 0031).

the received information is output to an interface for outputting the information under the control of the processing device in accordance with the program (paragraph 0029).

Shioda does not teach *the processing device receives a request for changing an output form of the output information in accordance with the program via an input interface, and the processing device changes an output form of the distributed information in response to the request for distributing the information in accordance with the program, and outputs the changed output to an output interface.* However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Shioda to change the output form (display) of the information in accordance with the program at the mobile terminal. For example, a web site is displayed differently when shown on a desktop computer (wide computer monitor), a laptop (a smaller computer monitor) and a cell phone display screen. These display settings are different because of the size of the computer/cell phone screen and graphic capability or limitations.

Response to Arguments

13.   Applicant's arguments with respect to claims 21-38 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW L. HAMILTON whose telephone number is (571)270-1837. The examiner can normally be reached on Monday-Friday 7:30a.m-5p.m EST alt Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James W. Myhre can be reached on (571) 272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MLH
Examiner, Art Unit 3688
August 11, 2008

/James W Myhre/
Supervisory Patent Examiner, Art Unit 3688